REMARKS

It should be noted that because March 22, 2009 fell on a Sunday, this paper is timely filed on Monday, March 23, 2009.

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejections presented in the outstanding Office Action in light of the following remarks. Claims 1-3, 5-9, 11-14, 16-20, 22 and 23 were pending at the time the outstanding Office Action was issued by the Examiner. Of these, Claims 1, 12 and 23 are independent claims; the remaining claims are dependent. Applicants respectfully request reconsideration and withdrawal of the objections and rejections presented in the Office Action in light of the foregoing amendments and the following remarks.

It should be noted that Applicants are not conceding in this application that the claims amended herein are not patentable over the art cited by the Examiner, as the present claim amendments are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Objections to the Specification

The specification stands objected to. The specification has been amended as suggested by the Examiner. Applicants thank the Examiner for attention to this detail and therefore respectfully request that the objection to the specification be withdrawn.

Objections to the Claims

Claims 1-3, 5-9, 11-14, 16-20, 22 and 23 stand objected to because of various informalities. In response, Applicants have amended these claims to adopt the suggestions made by the Examiner and to ensure sufficient antecedent basis. However, Applicants respectfully submit that the Examiner's presumption regarding claims 3 and 14 is incorrect and have therefore not amended the claim. Applicants kindly direct the Examiner's attention to the specification at pp. 14, lines 1-2 for assistance in understanding this claim language.

Accordingly, Applicants respectfully request the objections to the claims be reconsidered and withdrawn.

Claim Rejections under 35 U.S.C. 112

Claims 1-3, 5-9, 11-14, 16-20, 22, and 23 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the Examiner asserts that the limitation "several iterations" is indefinite. Applicants respectfully disagree. However, solely in an effort to facilitate

expeditious prosecution of this application, Applicants have amended claims 1, 12 and 23 herein to strike the word "several".

Additionally, the Examiner asserts that the limitation "the operating system priority" lacks sufficient antecedent basis in claims 11 and 22. Applicants have amended the claims as per the Examiner's suggestion.

It should be noted that claims 11 and 22 have been amended to recite "wherein the derived throttling level is enforced by reducing an operating system priority of *processes that are executing in* the at least one utility." This amendment is intended to further clarify a specific preferred embodiment referred to, *inter alia*, on pp. 16 of the specification.

In view of the foregoing amendments and remarks, Applicants respectfully request that the Examiner reconsider and withdraw the rejections of the claims under 35 U.S.C. 112, second paragraph.

Claim Rejections under 35 U.S.C. 103

Claims 1-3, 5-9, 11-14, 16-20, 22, and 23 stand rejected under 35 U.S.C. 103(a) as being obvious in light of U.S. Patent Application No. 2003/0088605 to Beghtel (hereinafter "Beghtel") in view of U.S. Patent No. 6,834,386 to Douceur et al. (hereinafter "Douceur"). Reconsideration and withdrawal of these rejections is respectfully requested in light of the following.

Applicants respectfully reiterate (and incorporate by reference here) the remarks previously made with respect to Douceur and Beghtel in the previous response

(Amendment of August 20, 2008) and respectfully submit the following in addition to those remarks.

Applicants respectfully submit that the references fail to teach or suggest all the claim limitations. The Examiner is kindly reminded that "[w]hen determining whether a claim is obvious, an examiner must make a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art. Thus, obviousness requires a suggestion of all limitations in a claim. Moreover, as the Supreme Court recently stated, *there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness." *Ex parte H. Garrett Wada et al.*, pp. 7, Appeal No. 2007-3733 (BPAI January 14, 2008) (internal quotation marks and citations omitted) (emphasis in original) (reversing Examiner's obviousness rejection).

As a preliminary manner, Applicants object to the use of conclusory statements to the effect that certain claim limitations are "inherent" or "obvious" to one of ordinary skill in the art. Applicants respectfully submit that these are not sufficient to meet the requirement that each claim limitation must be taught or suggested by the cited references, with some articulated reasoning and rational underpinning for combining the references. Applicants specifically disagree with this type of assertion found throughout the Office Action, as outlined further below, and respectfully submit that the Examiner has failed to establish a *prima facie* case of obviousness.

As a specific example, the Examiner states that it "is inherent that the tasks must be registered first with the computer subsystem prior to being executed" (Office Action,

pp. 5, paragraph 12). Applicants respectfully submit that this is not inherent. This is specifically because in the reference (paragraph [0021]), it is made clear that the utility task may be directly under the control of the OS (rather than a manager module as per the claims). Furthermore, the reference states that the "subsystem" (220), which the Examiner appears to mistakenly cite as the "manager module", may or may not be included. Moreover, as per the instantly claimed invention, the utility must register with the "manager module" in addition to any registration it may or may not have with the OS. Claim 1 (stating "...said at least one utility being configured to dynamically self-throttle and not require an operating system to throttle the at least one utility").

In a related issue found throughout the Office Action, Applicants respectfully submit that the Examiner mistakenly states (e.g. Office Action pp. 5, paragraph 12) that the Beghtel reference teaches the manager module of the instant claims. However, the manager module is a specific module/component that is separate from the main program of which the utility is a part. Applicants respectfully submit that cited subsystem falls short of teaching or suggesting the manager module of the instant claims.

Applicants now briefly highlight some of the more notable shortcomings of the references cited by the Examiner as compared to the instantly claimed invention. Throughout, it should be understood that when the Applicants note a specific deficiency of a cited reference, the other art of record does not account for the noted deficiency, such that the combined teachings of the references fail to render the instantly claimed invention obvious under 35 U.S.C. § 103(a).

The Examiner states (Office Action pp. 6, item 1) that paragraph 0023 of Beghtel teaches the arrangement for deriving a throttling level. Applicants respectfully disagree and submit that the quoted paragraph in Beghtel merely states that the task *receives* a throttle specification. Whereas the claim limitation requires "deriving" the throttling specification. These two concepts are very different from each other, as deriving necessarily involves computation.

Furthermore, the Examiner states (Office Action pp. 6, item 2) that the reference teaches dynamically updating the throttling level. Applicants respectfully disagree. The quoted paragraphs ([0025] and [0027]) merely discuss computing the time spent executing the unit of work. This is only done once. It is very clear from a brief review of Fig. 3 that the reference does not teach dynamic updating, as the throttling determination is made only once. In contrast, Applicants' claim is referring to the fact that the throttle specification is re-obtained in each iteration of the loop, not just at the beginning. Furthermore, with regard to the same paragraph of the Office Action, Applicants again respectfully disagree with the Examiner's assertions of inherence, with the same logic applying as mentioned above.

On pp. 9-10 of the Office Action, the Examiner cites Douceur as teaching "wherein the derived throttling level is enforced by reducing the amount of memory used by the at least one utility." However, the cited portion of Douceur simply refers to reducing CPU priority causing a reduction in CPU cycles and I/O resources, not a reduction in memory used by the utility. Applicants respectfully submit that one of ordinary skill in the art would immediately recognize that no OS today causes reduced memory usage when the priority is lowered. Accordingly, Applicants are puzzled by the

Examiner's reasoning and respectfully request a clarification as to how this reference could stand for such a teaching or suggestion.

Similarly, on pp. 10 of the Office Action, the Examiner asserts that Douceur teaches "wherein the derived throttling level is enforced by changing the granularity of locking." Applicants respectfully disagree. The cited portion of Douceur is referring to the "groveler" taking a specific type of lock. In contrast, the instant claim is referring to locking granularity, i.e. as understood by one of ordinary skill in the art as meaning a level (e.g. file has levels of file, page, line, word, character...). Accordingly, Applicants are confused by the Examiner's reasoning as to how Douceur could stand for such a teaching or suggestion and request clarification on this point.

On pp. 11 of the Office Action, the Examiner asserts that Beghtel teaches "wherein the derived throttling level is enforced by reducing the amount of processing accomplished by the at least one utility." Applicants respectfully disagree. The cited portion of the reference merely refers to suspension, i.e. doing the same amount of work (requiring the same amount of processing), but taking a longer total time. This is simply not what is claimed. Accordingly, Applicants respectfully request clarification of how this reference could stand for this teaching or suggestion.

It should be understood that each above-noted deficiency outlined with regard to the noted reference is not accounted for by the other art of record. Accordingly, Applicants respectfully submit that the combination of references fails to teach or suggest the claimed invention, as outlined above.

Applicants wish to respectfully reiterate their position that Beghtel simply does not teach what the Examiner cites it for. For example, claim 1 recites, *inter alia*:

> wherein the derived throttling level *is updated dynamically through iterations of a work loop* until said at least one utility has completed its work and then deregisters with the manager module

Claim 1 (emphasis added). The remaining independent claims have similar language. Applicants respectfully submit that the art of record, even when considered in combination, fails to teach or suggest the above quoted claim limitation. The Examiner cites Beghtel for this teaching. However, it is clear from even a brief review of Fig. 3 (and accompanying text) that the throttle (percentage of CPU consumed) is set once and not dynamically updated interatively through the work loop. That is, step 310 is out of the loop—it is used only once, not dynamically updated. The remaining art of record does not account for this deficiency. Accordingly, Applicants respectfully submit that the combined art fails to teach or suggest, *inter alia*, the above-quoted claim limitation.

In summary, Applicants respectfully submit that each reference utilized by the Examiner has notable deficiencies that are not overcome by the combination of other art of record. Accordingly, Applicants respectfully submit that the combined teachings of the references are insufficient to render the claimed invention obvious under 35 U.S.C. § 103. Applicants thus respectfully request reconsideration and withdrawal of these rejections.

Newly Presented Claims

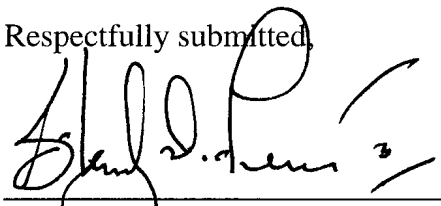
Applicants note that new claims 24 and 25 have been presented herein. These claims, in addition to being dependent from what is believed to be an allowable

independent claim, contain additional novel and non-obvious limitations. Support for these newly presented claims is found throughout the specification, particularly at pp. 20-21. Accordingly, Applicants respectfully submit that these claims are also presently in condition for allowance.

Conclusion

In summary, it is respectfully submitted that the instant application, including claims 1-3, 5-9, 11-14, 16-20, 22 and 23-25, is presently in condition for allowance. Notice to that effect is hereby earnestly solicited. If there are any further issues in this application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,



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